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CHARLES ELMORE
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 563

SIKORA REALTY CORPORATION,

Petitioner,

against

TIGHE E. WOODS, Housing Expediter, as Successor to the Price Administrator,

Respondent.

PETITION FOR REHEARING

To the Honorable FRED M. VINSON, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The petitioner respectfully requests that the time within which petitioner may move for a rehearing be extended and that reconsideration be given its petition for a writ of certiorari to the United States Emergency Court of Appeals which this Court denied on March 15, 1948.

Preliminary Statement

The decision which petitioner seeks to have reviewed involves the construction placed upon § 1(b) of the Emer-

gency Price Control Act of 1942 as amended whereby

> "* * * as to * * * rights or liabilities incurred, prior to such termination date (June 30th, 1947) the provisions of this act and, such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action or prosecution with respect to any such right, liability or offense."

The Area Rent Director on July 31, 1946 made an order reducing the maximum rent for an apartment in petitioner's house. A timely application for review was filed with the Regional Administrator who denied the application on November 5, 1946, following which the petitioner duly filed a protest on February 3, 1947 with the Office of Temporary Controls, as successor to the Office of Price Administration. This protest was not acted upon by the Housing Expediter as successor to the Office of Temporary Controls until October 29, 1947, when the protest was denied. Petitioner then duly filed a complaint with the Emergency Court of Appeals but this complaint was dismissed on the ground that through the expiration of the Act the Court had lost jurisdiction.

Petitioner applied to this Court for a writ of certiorari on the ground that § 1(b) of the Emergency Price Control Act as amended, clearly provided for continuing jurisdiction of the Emergency Court of Appeals until the legality of a rent order made prior to June 30, 1947 had been finally determined, and upon the further ground that unless the statute were so construed the Housing and Rent Act of 1947 would be rendered unconstitutional as depriving petitioner of its right to a review of an administrative order.

Reasons for Requesting Rehearing

(1) A rehearing is requested because this Court in the opinion of *Woods* v. *Hills,* Docket No. 437, decided May 10, 1948, expressly states that the review of a rent order by the Emergency Court of Appeals under Sec. 204(a) of the Emergency Price Control Act was *still* available after the attempted modification of § 204(e) by the Supplemental Appropriation Act of 1948, approved July 30, 1947;

(2) In the same opinion this Court expressly indicated that an elimination of all provisions for review by the Emergency Court of Appeals of a rent order made prior to June 30, 1947, would be a denial of due process.

1. The continuing jurisdiction of the Emergency Court of Appeals.

In *Woods* v. *Hills* (*supra*), this Court said concerning the continuing jurisdiction of the Emergency Court of Appeals with respect to a rent order made prior to June 30, 1947, at page 6 of the official print, Mr. Chief Justice Vinson delivering the opinion of the entire Court:

> "However, the 1947 amendment left unimpaired the provision in § 203(a) for review of rent orders by filing protests with the Administrator (*i. e.,* the Housing Expediter, as transferee of the Administrator's rent control functions). A denial of such a protest *may be reviewed* in the Emergency Court of Appeals by filing a complaint pursuant to § 204(a). * * * (Italics supplied.)
>
> "Thus, it appears that the Emergency Court of Appeals *may still be able to acquire jurisdiction* to review rent orders, issued under the Price Control Act, by means of the protest and complaint procedure of §§ 203(a) and 204(a). (Italics supplied.)

And at page 7:

> "* * * That statutory review procedure, whose constitutionality was upheld in the *Yakus* case, is *still preserved* to defendants charged with violations of rent orders issued under the Emergency Price Control Act of 1942. If anything, *the judicial review still available* to such defendants is even broader than the procedure sustained in the *Yakus* case, since the sixty-day limitation on the filing of protests no longer applies to rent orders." (Italics supplied.)

It thus clearly appears that this Court has adopted the contention of this petitioner that under the provisions of § 1(b) of the Emergency Price Control Act, the jurisdiction of the Emergency Court of Appeals respecting a rent order made prior to June 30, 1947 continues until the validity of the order has been finally determined.

Unless petitioner's application for a writ of certiorari is granted the decision of this Court in denying it will be directly inconsistent with the recent opinion of this Court in the case of *Woods* v. *Hills*.

2. The denial of due process.

§ 204(b) of the Housing and Rent Act of 1947 fixes as maximum rental the rental in effect on June 30th, 1947. In the instant case the Area Rent Director had by order dated July 31st, 1946 reduced a maximum rental. Petitioner challenged the validity of this order, and the validity of the rental which was in effect on June 30th, 1947 has never been determined because the Emergency Court of Appeals held that its jurisdiction ceased when the Emergency Price Control Act of 1942 expired. Petitioner claims that such a construction of §1(b) of the Price Control Statute renders § 204(b) of the Housing and Rent Act of 1947 unconstitutional so far as the instant case is con-

cerned because otherwise Congress is deemed to have adopted a maximum rent as to which petitioner has never been accorded an opportunity of review and as to which petitioner has therefore been denied due process.

In *Woods* v. *Hills,* this court held that an attempted amendment to § 204(e) of the Price Control Act, contained in the Supplemental Appropriation Act, approved July 30th, 1947, was ineffectual because of an obvious error which it contained. § 204(e) as so attempted to be amended contained a provision for obtaining a review of a rent order claimed to be invalid. In discussing the effect of a situation in which the aggrieved party was thus denied a means of reviewing an alleged invalid rent order, this court said at page 6 of its opinion (official print):

> "* * * if elimination of the complaint procedure of § 204 (e) as a remedy for those seeking to challenge rent orders meant the elimination of all provision for review by the Emergency Court of Appeals, it might be argued that preservation of the ban imposed by § 204 (d) on district court adjudication of the validity of rent orders would be a denial of due process to a defendant charged with a violation of an order."

It is submitted that the argument made under Point II of the brief supporting petitioner's application for a writ of certiorari is substantially the same as expressed by this court in the foregoing quotation, and if the suggestion made in the foregoing quotation is correct, a writ of certiorari should be granted for the purpose of correcting an injustice done to petitioner by a decision of the Emergency Court of Appeals.

Conclusion

There is thus presented a conflict between the law as expounded by this Court in the opinion of *Woods* v. *Hills*, Docket 437, and the law as applied by this Court in denying petitioner's application for the writ of certiorari prayed for.

Wherefore petitioner respectfully urges that the time within which to apply for a rehearing be extended, that a rehearing of the petition be granted, and that upon further consideration the order of March 15th, 1948 denying the application for a writ of certiorari be revoked, that a writ of certiorari issue, and that petitioner be afforded such other, further and different relief as to this Court may seem just.

Respectfully submitted,

AGNES SIKORA GILLIGAN,
Counsel for Petitioner,
Sikora Realty Corporation.

Certificate

I, AGNES SIKORA GILLIGAN, counsel for the above named petitioner, Sikora Realty Corporation, do hereby certify that the foregoing petition for an extension of time within which to apply for a rehearing, and for a rehearing of this case is presented in good faith and not for delay and is restricted to the grounds specified in subdivision 2 of Rule 33 of this Court as amended.

AGNES SIKORA GILLIGAN,
Counsel.